

L. 105-56 and similar sections in subsequent DoD appropriations acts);

(ii) Employ economic order quantity procurement in excess of \$20 million in any one year of the contract (10 U.S.C. 2306b(1)(B)(i)(I));

(iii) Involve a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20 million in any one year (see 10 U.S.C. 306b(1)(B)(ii) and section 8008(a) of Pub. L. 105-56 and similar sections in subsequent DoD appropriations acts); or

(iv) Include a cancellation ceiling in excess of \$100 million (see 10 U.S.C. 2306c(d)(4), 10 U.S.C. 2306b(g), and section 8008(a) of Pub. L. 105-56 and similar sections in subsequent DoD appropriations acts).

(2) A DoD component must submit a request for authority to enter into a multiyear contract described in paragraphs (e)(1)(i) through (iv) of this section as part of the component's budget submission for the fiscal year in which the multiyear contract will be initiated. DoD will include the request, for each candidate it supports, as part of the President's budget for that year and in the Appendix to that budget as part of proposed legislative language for the appropriations bill for that year (section 8008(b) of Pub. L. 105-56).

(3) If the advisability of using a multiyear contract becomes apparent too late to satisfy the requirements in paragraph (e)(2) of this section, the request for authority to enter into a multiyear contract must be—

(i) Formally submitted by the President as a budget amendment; or

(ii) Made by the Secretary of Defense, in writing, to the congressional defense committees (see section 8008(b) of Pub. L. 105-56).

(4) Agencies must establish reporting procedures to meet the congressional notification requirements of paragraph (e)(1) of this section. The head of the agency must submit a copy of each notice to the Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)DPAP), and to the Deputy Under Secretary of Defense (Com-

troller) (Program/Budget) (OUSD(C)(P/B)).

(5) If the budget for a contract that contains a cancellation ceiling in excess of \$100 million does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract—

(i) The notification required by paragraph (e)(1) of this section shall include—

(A) The cancellation ceiling amounts planned for each program year in the proposed multiyear contract, together with the reasons for the amounts planned;

(B) The extent to which costs of contract cancellation are not included in the budget for the contract; and

(C) A financial risk assessment of not including budgeting for costs of contract cancellation (10 U.S.C. 2306b(g) and 10 U.S.C. 2306c(d)); and

(ii) The head of the agency shall provide copies of the notification to the Office of Management and Budget at least 14 days before contract award.

[66 FR 63337, Dec. 6, 2001, as amended at 68 FR 7439, Feb. 14, 2003; 70 FR 24324, May 9, 2005; 71 FR 75892, Dec. 19, 2006; 75 FR 9115, Mar. 1, 2010; 75 FR 54526, Sept. 8, 2010; 75 FR 45073, Aug. 2, 2010; 76 FR 58152, Sept. 20, 2011]

#### **217.171 Multiyear contracts for services.**

(a) The head of the agency may enter into a multiyear contract for a period of not more than 5 years for the following types of services (and items of supply relating to such services), even though funds are limited by statute to obligation only during the fiscal year for which they were appropriated (10 U.S.C. 2306c). Covered services are—

(1) Operation, maintenance, and support of facilities and installations;

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(3) Specialized training requiring high-quality instructor skills (*e.g.*, training for pilots and aircrew members or foreign language training);

(4) Base services (*e.g.*, ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal); and

(5) Environmental remediation services for—

- (i) An active military installation;
- (ii) A military installation being closed or realigned under a base closure law as defined in 10 U.S.C. 2667(h)(2); or
- (iii) A site formerly used by DoD.

(b) The head of the agency must be guided by the following principles when entering into a multiyear contract for services:

(1) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of the plant or equipment. As used in this section, “useful commercial life” means the commercial utility of the facilities rather than the physical life, with due consideration given to such factors as the location, specialized nature, and obsolescence of the facilities.

(2) Consider the desirability of obtaining an option to extend the term of the contract for a reasonable period not to exceed 3 years at prices that do not include charges for plant, equipment, or other nonrecurring costs already amortized.

(3) Consider the desirability of reserving the right to take title, under the appropriate circumstances, to the plant or equipment upon payment of the unamortized portion of the cost.

(c) Before entering into a multiyear contract for services, the head of the agency must make a written determination that—

(1) There will be a continuing requirement for the services consistent with current plans for the proposed contract period;

(2) Furnishing the services will require—

(C)(2) A substantial initial investment in plant or equipment; or

(ii) The incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(3) Using a multiyear contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operations.

(d) The head of an agency may not initiate a multiyear contract for serv-

ices if the value of the multiyear contract exceeds \$625.5 million unless a law specifically provides authority for the contract (10 U.S.C. 2306(c)).

[66 FR 63337, Dec. 6, 2001, as amended at 68 FR 43333, July 22, 2003; 70 FR 24324, May 9, 2005; 71 FR 75892, Dec. 19, 2006; 75 FR 45073, Aug. 2, 2010; 76 FR 58153, Sept. 20, 2011; 76 FR 76319, Dec. 7, 2011]

#### **217.172 Multiyear contracts for supplies.**

(a) This section applies to all multiyear contracts for supplies, including weapon systems and other multiyear acquisitions specifically authorized by law (10 U.S.C. 2306b).

(b) The head of the agency may enter into a multiyear contract for supplies if, in addition to the conditions listed in FAR 17.105–1(b), the use of such a contract will promote the national security of the United States (10 U.S.C. 2306b(a)(6)).

(c) Multiyear contracts in amounts exceeding \$500 million must be specifically authorized by law (10 U.S.C. 2306b and 10 U.S.C. 2306c). A multiyear supply contract may be authorized by an appropriations act or a law other than an appropriations act (10 U.S.C. 2306b(i)(3) and (1)(3)).

(d) The head of the agency shall not enter into a multiyear contract unless—

(1) The Secretary of Defense has submitted to Congress a budget request for full funding of units to be procured through the contract; and

(2) In the case of a contract for procurement of aircraft, the budget request includes full funding of procurement funds for production beyond advance procurement activities of aircraft units to be produced in the fiscal year covered by the budget.

(e)(1) The head of the agency must not enter into or extend a multiyear contract that exceeds \$500 million (when entered into or extended until the Secretary of Defense identifies the contract and any extension in a report submitted to the congressional defense committees (10 U.S.C. 2306b(1)(5))).

(2) In addition, for contracts equal to or greater than \$500 million, the head of the contracting activity must determine that the conditions required by paragraph (g)(2)(i) through (vii) of this